

DEPARTMENT OF FINANCIAL INSTITUTIONS

CAROL D. CHESBROUGH, Interim Commissioner
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January 11, 2008

All Credit Unions

Re: Investments in Shares of Visa, Inc.

Dear Presidents/Managers:

Several credit unions recently inquired about the conversion of their membership interests in Visa, U.S.A., into shares of restricted common stock of Visa, Inc. They asked whether the receipt and holding of the Visa stock by credit unions is an investment that requires the approval of the Commissioner of Financial Institutions (the "Commissioner"). We conclude the approval of the Commissioner is necessary.

BACKGROUND

After discussing the matter with the Office of the General Counsel of Visa, we understand the situation as follows:

Visa, U.S.A., was a non-stock Delaware corporation in which credit union members purchased interests for a nominal sum.

Membership in Visa, U.S.A., was necessary to receive services provided by Visa. Income was generated by Visa through fees charged to members for services rendered.

Recently, the members of Visa, U.S.A., voted to create a Delaware stock corporation, and to exchange their interests in the non-stock corporation for shares of Visa, Inc. common stock that are subject to a transfer restriction that will last for three years. The amount of restricted stock that a member received was based upon the total amount of the various fees paid by the member to Visa, U.S.A. The conversion to a stock corporation also included a requirement that a public offering of additional common stock be conducted within a set amount of time after Visa, Inc., was formed.

CHARACTER OF INVESTMENT

Representatives of the credit unions argue that the exchange of member interests for stock was an event that occurred: (1) without consideration, since the credit unions paid little or nothing for their interests in Visa, U.S.A.; and, (2) without volition on the part of the credit unions since the exchange of interest for stock was "automatic." Therefore, they argue, no approval is necessary for credit unions to take and hold the restricted Visa stock. We disagree.

Taking the last point first, it is noted that the new Visa corporation was formed with the vote of the members of the old corporation. Thus, while the actual conversion of membership interests to stock occurred without any direct action by the member credit unions, there was indirect action taken on the part of those members to effect the conversion through the vote. As to the first point, the argument misses an essential fact. There was an exchange of interests: membership in a corporation for stock in a new corporation. Thus, there was legal consideration paid for the shares in the new corporation. The cost basis of the membership interest is irrelevant.

In addition, the exchange described above constitutes an investment due to the changed nature of the credit unions' respective interests in Visa. No longer is ownership of Visa necessary to obtain Visa services. The interests that once were necessary to obtain services from Visa have transformed into a more traditional understanding of what is an investment: an expenditure to acquire property or assets to produce revenue (See Black's Law Dictionary, Eighth Edition, p. 844). In that vein, the terms and conditions of the restricted stock will allow the holders of the stock to realize gains on the transfer of the shares after a three year period. Anecdotal evidence indicates that at least some credit unions intend to sell the stock once the restriction is lifted.

AUTHORIZATION

Having concluded that ownership of the Visa stock is an investment, we turn to the question of what authorization is necessary to allow the credit unions to continue to hold the restricted stock. Article 6 (commencing at Section 14650), Chapter 4 of Division 5 of the Financial Code, provides various authorizations for investments by credit unions ("Article 6"). Therefore, the initial issue is whether by specifying what investments may be made by a credit union, the Legislature intended to create a closed regulator system that prevents a credit union from making an investment unless the credit union is specifically empowered to make the proposed investment. We believe the statutory construction of Article 6 supports a conclusion that the regulatory scheme is closed.

Financial Code Section 14652 provides that a credit union may invest in securities and other assets described in Chapter 9 (commencing with Section 1000) of the Financial Code. Chapter 9 generally sets forth a series of specific investments that are obligations, or guarantees, of governmental organizations. It makes no sense to say

that a credit union may invest in some sort of an investment if it already has that inherent power due to its nature as a non-profit mutual benefit corporation. Further, Financial Code Section 14653.5 provides that "notwithstanding any other provision of law, a credit union may make any investment authorized by regulation or in writing by the Commissioner." The clear implication of the cited sections is that a credit union may make an investment only if the investment is authorized by Article 6, or if the investment is approved by the Commissioner. Stated another way, if a credit union's ability to invest were unlimited, there would be no need for either section. Indeed, there would be no need for Article 6 at all. Thus, to see if the subject investment may be made by a credit union, we must look for authorization in Article 6.

In the present instance, only Section 14651 appears to have direct applicability to the Visa investment. Section 14651 is commonly cited as authorization for investments in securities of corporations. However, the ability to invest in corporations under the authority of Section 14651 is not unrestricted. That section requires that such investments may only be made in corporations that provide services to one or more credit unions. Due to that restriction, such corporations are commonly referred to as credit union service organizations ("CUSOs"). Stated another way, a necessary component of the formation of a CUSO is that the CUSO's purpose is to provide services to its investors. That is not the case with Visa. While Visa may provide services to credit unions and those same credit unions may hold Visa stock, the corporation was not formed for the purpose of providing services to its investors. Rather, it was formed to provide financial services for anyone willing to pay for those services. It is irrelevant whether the serviced entity is an investor in the corporation. Thus, the credit union ownership of Visa stock appears to be an investment from which the sole goal is to obtain profits. Accordingly, the Department does not believe that Visa, Inc. can squarely fit within the concept of a credit union service organization and, therefore, the investment does not fit under the authorization provided for in Section 14651. It is for all of the reasons stated above that Section 14651, and the balance of the specific investment authorizations in Article 6, do not provide investment authority for credit union ownership of Visa stock. Accordingly, we conclude that the only way credit unions may obtain and hold the restricted shares of Visa, Inc., is by an approval from the Commissioner pursuant to Financial Code Section 14653.5.

CONCLUSION

In deciding that the investments in Visa stock must be approved pursuant to Section 14653.5, the Department does not believe it is incumbent upon credit unions to file individual applications for approval of their respective share ownership of Visa restricted stock. It is for that reason that the Commissioner hereby approves all of the individual credit union investments in the restricted stock of Visa, Inc., that resulted from the conversion of ownership interests in Visa, U.S.A., held by state-chartered credit unions as of the date of this letter.

Please be advised that the approval set forth in this letter applies only to the ownership of restricted stock resulting from the conversion of Visa, U.S.A. member interests. The approval set forth above should not be construed as authorizing any investment in other shares of Visa, Inc., including, but not limited to, common stock that will be issued in the initial public offering of Visa. If any credit union wishes to invest in unrestricted common shares of Visa, Inc., it must apply to do so. This letter should not be interpreted as an indication that the Commissioner has or will approve such an application.

If you have any questions regarding this matter, please feel free to contact the undersigned at (916) 322-1570, or ksayre-peterson@dfi.ca.gov.

Very truly yours,



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